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Sent: 1/9/2018 9:33:38 PM
To: Goldmann, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2bf5b6f833ea46cca6abe2bb68961167-EGOLDM02]
Subject: Reinitiation Notice

Elizabeth,

The first passage is an excerpt from on or about page 373-374 in the April 28, 2016, final biological opinion on the Rosemont Copper Mine. Following it are other excerpted passages from the April 2016 document in which reinitiation of formal consultation is discussed.

The typical Reinitiation Notice is largely limited to the contents of the first paragraph. Rosemont affects many species, with a great deal of uncertainty involved with both the impacts and mitigation. We therefore added detail to indicate under what circumstances reinitiation might be likely to occur.

REINITIATION NOTICE

This concludes formal and conference consultation on the actions outlined in your request. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

Please note that this consultation has been conducted based on complete implementation of the proposed action, including the proposed conservation measures. Should the conservation measures not be implemented, implemented incompletely, or altered – and those changes result in differing effects to threatened or endangered species and/or critical habitat – reinitiation of formal consultation must be requested. We make specific note of the Incidental Take Statements for the Gila chub, Gila topminnow, desert pupfish, northern Mexican gartersnake, Chiricahua leopard frog, yellow-billed cuckoo, and southwestern willow flycatcher. For these species, the authorized incidental take (or the surrogate measure of that incidental take) is the result of the total incidental take anticipated to result from the proposed action's adverse effects less the minimized level of take resulting from implementation of the Conservation Measures. In these cases where funding has been provided in lieu of a specific project or projects, a failure to complete the amount of restoration or enhancement that we have anticipated from the funding will result in less of the adverse effects' incidental take being minimized. This would necessitate an immediate analysis of the need to reinitiate formal consultation. The Huachuca water umbel is a plant and thus lacks an incidental take statement. Nevertheless, the species' effects analysis includes the beneficial effects of Conservation Measures; the adverse effects of the proposed action would be less effectively minimized if the Conservation Measures are not implemented or are implemented to a lesser extent than anticipated. This may constitute new information with respect to the proposed action's effects to Huachuca water umbel that was not considered in this opinion; thus also necessitating an immediate analysis of the need to reinitiate formal consultation.

The Incidental Take Statements for the lesser long-nosed bat, jaguar, ocelot, Chiricahua leopard frog, northern Mexican gartersnake, Gila chub, Gila topminnow, and desert pupfish contain Reasonable and Prudent Measures

and Terms and Conditions that implement those measures. We reiterate that such measures are non-discretionary, and must be included by the USFS as binding conditions of any grant or permit issued to the applicant, as appropriate, for the exemption in section 7(o)(2) to apply. The USFS has a continuing duty to regulate the activity that is covered by the respective Incidental Take Statements. If the USFS (1) fails to assume and implement the terms and conditions, or (2) fails to require the applicant to adhere to the terms and conditions of the Incidental Take Statements through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the USFS, or the applicant must report the progress of the action and its impact on the species as specified in the Incidental Take Statement [see 50 CFR 402.14(1)(3)].

Regarding the proposed action's effects to the respective proposed critical habitats for the yellow-billed cuckoo and northern Mexican gartersnake, you may request the FWS to confirm the conference opinion as a biological opinion issued through formal consultation when the yellow-billed cuckoo and/or northern Mexican gartersnake critical habitat critical habitat are designated. The request must be in writing. If the FWS reviews the proposed action and finds that there have been no significant changes in the action as planned or in the information used during the conference, the FWS will confirm the conference opinion as the biological opinion on the project and no further section 7 consultation will be necessary.

I should also have mentioned that the April 28, 2016, Final BO was itself a reinitiation of the October 30, 2013 Final BO.

Excerpt from Page 4

May 16, 2014: We transmitted a letter to you with respect to the need to reinitiate formal consultation on the proposed action (File Number 22410-2009-F-0389). We stated that reinitiation was warranted due to: (1) substantive differences in the effects analysis in the October 30, 2013, Final BO and the impact analysis in the FEIS; (2) the listing of additional species not considered in the initial consultation; (3) adoption of conference; and (4) the detection of an ocelot within the action area.

Excerpt from Page 24 (bold attribute added):

Background on Revised Effects Analyses The FEIS, published after issuance of the October 30, 2013 Final BO, disclosed impacts to groundwater in a comprehensive manner. The FEIS selected the largest predicted drawdown value (the worst-case scenario), at each location and time-step, regardless of the model from which the scenario was derived. The FEIS also disclosed direct (1:1 ratio) linkages between these groundwater drawdowns caused by mining and losses of surface flow in streams (i.e. 0.2-foot drawdown at a stream would result in a 0.2-foot drop in water elevation). While these were reasonable approaches to employ in a disclosure document, they were nevertheless different from the approaches employed in the various BAs and in the Final BO. **Moreover, the revised analyses in the FEIS indicated a strong potential to trigger Item 2 in the October 30, 2013 Final BO's Reinitiation Notice, which directs that consultation be reinitiated if "new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion".**

Lastly, if you were to search the April 28, 2016, Final BO for the term "reinitiation", you will see it used in several species' Terms and Conditions. The context in which it is used is related to the potential for groundwater drawdowns to exceed modeled values and affect habitat/critical habitat to a greater degree and/or for the consequences of non-implemented or failed conservation measures. There are a lot of moving parts here.

Thanks for the discussion this afternoon as well as the comment letter. Take care!

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